

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
Charlottesville Division

JASON KESSLER)	
)	
Plaintiff,)	
)	
v.)	Case No. 3:18cv00015-NKM-JCH
)	
CITY OF CHARLOTTESVILLE)	
MAURICE JONES)	
Charlottesville City Manager)	
In his individual and official capacities)	
)	
Defendants.)	

MOTION TO COMPEL DISCOVERY AND SANCTIONS

Defendants, through counsel, and supported by a Memorandum filed herewith, move this Court to provide the below relief pursuant to Federal Rules of Civil procedure 26 and 37. Consistent with the schedule for expedited discovery to which the parties agreed in the Rule 26(f) petition; it provides for expedited briefing so that this motion shall ripe for adjudication Friday June 6, 2018, or at the Court's earliest convenience thereafter.

Defendants respectfully request the following relief:

1. Order for Plaintiff to cure the deficiencies in his discovery responses by July 11, 2018.
2. Permit Defendants to file a supplemental brief, on or before July 13, 2018, in support of their forthcoming Opposition to Plaintiff's Motion for Preliminary Injunction to address any additional materials produced by Plaintiff.
3. Order monetary sanctions, pursuant to Federal Rules of Civil Procedure 26(g) and 37(c), against Jason Kessler and his counsel for inadequate responses to discovery requests, and covering Defendants' expenses incurred in making this motion, including attorney fees for time spent: 1) requesting the search of Plaintiff's electronic communications; 2)

following up on deficiencies and otherwise fulfilling their meet and confer obligations; 3) drafting this motion and supporting materials, as well as any supplemental brief that may be needed; and 4) arguing the motion.

4. The appointment by this Court of a neutral forensics expert to image all electronic devices (including phones), e-mail accounts, and social media accounts in the possession, custody, or control of Jason Kessler in order to ensure an adequate response to discovery requests issued on June 4, 2018 and to ensure that additional responsive items have not been deleted from those sources.
5. The review of these images in accordance with protocols agreed on by the parties or established by the Court to ensure that all responsive, non-privileged materials are fully produced and that any responsive deleted materials are recovered.
6. Granting Defendants' request for an adverse inference instruction regarding to the discovery materials Plaintiff knowingly failed to preserve.

Pursuant to Federal Rule of Civil Procedure 37, counsel for Defendants certify that we have attempted to resolve the matter on several occasions, including a letter detailing deficiencies to which Plaintiff has not responded and through requests at Plaintiff's deposition. Plaintiff agreed to do some additional searching, but given his history and the short time frame in this case this motion is necessary.

DATED: June 29, 2018

/s/ Linda Odom
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Counsel for Defendants

CERTIFICATE OF SERVICE

I hereby certify that on June 29, 2018, the foregoing was filed electronically with the Clerk of Court using the CM/ECF system, which will send a Notice of Electronic Filing (NEFF) to counsel of record in this matter.

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